

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
**SENATE BILLS NOS. 49,
65, 210 & 251**
94TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, February 8, 2007, with recommendation that the Senate Committee Substitute do pass.

0428S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, and to enact in lieu thereof six new sections relating to telephonic solicitations, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.1095, 407.1098, 407.1101, 407.1104, and 407.1107, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 407.1095, 407.1098, 407.1101, 407.1104, 407.1107, and 407.1108, to read as follows:

407.1095. As used in sections 407.1095 to 407.1110, the following words and phrases mean:

(1) **"Automated call", any prerecorded or synthesized voice message resulting from the use of an automatic dialing-announcing device but does not include communication:**

(a) **To any residential subscriber with that subscriber's prior express invitation or permission;**

(b) **By or on behalf of any person or entity with whom a residential subscriber has had a business contact within the past one hundred eighty days or a current business or personal relationship;**

(c) **When the message is preceded by a live operator who obtains the subscriber's consent before the automated message is delivered;**

(d) **From a public safety agency or other entity notifying a person of an emergency. Such calls may include Amber alert**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 **notification issued under section 210.1012, RSMo;**

16 **(e) From a telecommunications company, as defined in section**
17 **386.020, RSMo, calling solely for the purpose of verifying the delivery**
18 **of products or services that were provided at no charge to the**
19 **residential subscriber;**

20 **(2) "Automatic dialing-announcing device", a device that selects**
21 **and dials telephone numbers and that, working alone or in conjunction**
22 **with other equipment, disseminates a prerecorded or synthesized voice**
23 **message to the telephone number called;**

24 **(3) "Caller identification service", a type of telephone service which**
25 **permits telephone subscribers to see the telephone number of incoming telephone**
26 **calls;**

27 **(4) "Political solicitation", any voice communication from a live**
28 **operator or through the use of an automatic dialing-announcing device**
29 **for the purpose of promoting, advertising, or campaigning for or**
30 **against a political candidate or political issue;**

31 **[(2)] (5) "Residential subscriber", a person who has subscribed to any**
32 **residential telephone service [from a local exchange company], wireless service**
33 **or similar service, that is used primarily for personal and familial use,**
34 **or the other persons living or residing with such person;**

35 **[(3)] (6) "Telephone solicitation", any voice [communication over a**
36 **telephone line from a live operator, through the use of ADAD equipment or by**
37 **other means], facsimile, graphic imaging, or data communication,**
38 **including text messaging communications, for the purpose of encouraging**
39 **the purchase or rental of, or investment in, property, goods or services, but does**
40 **not include communications:**

41 **(a) To any residential subscriber with that subscriber's prior express**
42 **invitation or permission;**

43 **(b) By or on behalf of any person or entity with whom a residential**
44 **subscriber has had a business contact within the past one hundred eighty days**
45 **or a current business or personal relationship;**

46 **(c) By or on behalf of an entity organized pursuant to Chapter 501(c)(3)**
47 **of the United States Internal Revenue Code, while such entity is engaged in**
48 **fund-raising to support the charitable purpose for which the entity was**
49 **established provided that a bona fide member of such exempt organization makes**
50 **the voice communication;**

51 (d) By or on behalf of any entity over which a federal agency has
52 regulatory authority to the extent that:

53 a. Subject to such authority, the entity is required to maintain a license,
54 permit or certificate to sell or provide the merchandise being offered through
55 telemarketing; and

56 b. The entity is required by law or rule to develop and maintain a no-call
57 list;

58 (e) By a natural person responding to a referral, or working from his or
59 her primary residence, or a person licensed by the state of Missouri to carry out
60 a trade, occupation or profession who is setting or attempting to set an
61 appointment for actions relating to that licensed trade, occupation or profession
62 within the state or counties contiguous to the state.

407.1098. [1.] No person or entity shall make or cause to be made any
2 telephone solicitation **or automated call** to [the telephone line of] any
3 residential subscriber in this state who has given notice to the attorney general,
4 in accordance with rules promulgated pursuant to section 407.1101 of such
5 subscriber's objection to receiving telephone solicitations **and automated calls**.

6 [2. This section shall take effect on July 1, 2001.]

407.1101. 1. The attorney general shall establish and provide for the
2 operation of a database to compile a list of telephone numbers of residential
3 subscribers who object to receiving telephone solicitations **and automated**
4 **calls**. [The attorney general shall have such database in operation no later than
5 July 1, 2001.]

6 2. [No later than January 1, 2001,] The attorney general shall promulgate
7 rules and regulations governing the establishment of a state no-call database as
8 he or she deems necessary and appropriate to fully implement the provisions of
9 sections 407.1095 to 407.1110. The rules and regulations shall include those
10 which:

11 (1) Specify the methods by which each residential subscriber may give
12 notice to the attorney general or its contractor of his or her objection to receiving
13 such solicitations **and calls** or revocation of such notice. There shall be no cost
14 to the subscriber for joining the database;

15 (2) Specify the length of time for which a notice of objection shall be
16 effective and the effect of a change of telephone number on such notice;

17 (3) Specify the methods by which such objections and revocations shall be
18 collected and added to the database;

19 (4) Specify the methods by which any person or entity desiring to make
20 telephone solicitations **or automated calls** will obtain access to the database as
21 required to avoid calling the telephone numbers of residential subscribers
22 included in the database, including the cost assessed to that person or entity for
23 access to the database;

24 (5) Specify such other matters relating to the database that the attorney
25 general deems desirable.

26 3. If the Federal Communications Commission establishes a single
27 national database of telephone numbers of subscribers who object to receiving
28 telephone solicitations pursuant to 47 U.S.C., Section 227(c)(3), the attorney
29 general shall include that part of such single national database that relates to
30 Missouri in the database established pursuant to this section.

31 4. Information contained in the database established pursuant to this
32 section shall be used only for the purpose of compliance with section 407.1098 and
33 this section or in a proceeding or action pursuant to section 407.1107. Such
34 information shall not be considered a public record pursuant to chapter 610,
35 RSMo.

36 5. In April, July, October and January of each year, the attorney general
37 shall be encouraged to obtain subscription listings of [consumers] **subscribers**
38 in this state who have arranged to be included on any national do-not-call list and
39 add those [names] **telephone numbers** to the state do-not-call list.

40 6. The attorney general may utilize moneys appropriated from general
41 revenue and moneys appropriated from the merchandising practices revolving
42 fund established in section 407.140 for the purposes of establishing and operating
43 the state no-call database.

44 7. Any rule or portion of a rule, as that term is defined in section 536.010,
45 RSMo, that is created under the authority delegated in sections 407.1095 to
46 407.1110 shall become effective only if it complies with and is subject to all of the
47 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
48 section and chapter 536, RSMo, are nonseverable and if any of the powers vested
49 with the general assembly pursuant to chapter 536, RSMo, to review, to delay the
50 effective date or to disapprove and annul a rule are subsequently held
51 unconstitutional, then the grant of rulemaking authority and any rule proposed
52 or adopted after August 28, 2000, shall be invalid and void.

 407.1104. 1. Any person or entity who makes a telephone solicitation to
2 [the telephone line of] any residential subscriber in this state shall, at the

3 beginning of such **[call] solicitation**, state clearly the identity of the person or
4 entity initiating the **[call] solicitation**.

5 2. No person or entity who makes a telephone solicitation **[to the**
6 **telephone line of a residential subscriber] or automated call** in this state shall
7 knowingly use any method to block or otherwise circumvent **[such] any**
8 subscriber's use of a caller identification service.

407.1107. 1. The attorney general may initiate proceedings relating to a
2 knowing violation or threatened knowing violation of section 407.1098 or
3 407.1104. Such proceedings may include, without limitation, an injunction, a civil
4 penalty up to a maximum of five thousand dollars for each knowing violation and
5 additional relief in any court of competent jurisdiction. The attorney general may
6 issue investigative demands, issue subpoenas, administer oaths and conduct
7 hearings in the course of investigating a violation of section 407.1098 or 407.1104.

8 2. In addition to the penalties provided in subsection 1 of this section, any
9 person or entity that violates section 407.1104 shall be subject to all penalties,
10 remedies and procedures provided in sections 407.010 to 407.130. The remedies
11 available in this section are cumulative and in addition to any other remedies
12 available by law.

13 3. Any person who has received more than one telephone solicitation **or**
14 **automated call** within any twelve-month period by or on behalf of the same
15 person or entity in violation of section 407.1098 or 407.1104 may either:

16 (1) Bring an action to enjoin such violation;

17 (2) Bring an action to recover for actual monetary loss from such knowing
18 violation or to receive up to five thousand dollars in damages for each such
19 knowing violation, whichever is greater; or

20 (3) Bring both such actions.

21 4. It shall be a defense in any action or proceeding brought pursuant to
22 this section that the defendant has established and implemented, with due care,
23 reasonable practices and procedures to effectively prevent telephone solicitations
24 **or automated calls** in violation of section 407.1098 or 407.1104.

25 5. No action or proceeding may be brought pursuant to this section:

26 (1) More than two years after the person bringing the action knew or
27 should have known of the occurrence of the alleged violation; or

28 (2) More than two years after the termination of any proceeding or action
29 arising out of the same violation or violations by the state of Missouri, whichever
30 is later.

31 6. A court of this state may exercise personal jurisdiction over any
32 nonresident or his or her executor or administrator as to an action or proceeding
33 authorized by this section in the manner otherwise provided by law.

34 7. The remedies, duties, prohibitions and penalties of sections 407.1095
35 to [407.1104] **407.1107** are not exclusive and are in addition to all other causes
36 of action, remedies and penalties provided by law.

37 8. No provider of telephone caller identification service shall be held liable
38 for violations of section 407.1098 or 407.1104 committed by other persons or
39 entities.

40 [9. Section 407.1104 and this section shall take effect on July 1, 2001.]

407.1108. 1. Any person or entity making a political solicitation
2 **to any residential subscriber in this state shall clearly state who paid**
3 **for the solicitation by using the words "This message is paid for by"**
4 **followed by the proper identification of the sponsor.**

5 (1) In regard to any political solicitation paid for by a candidate,
6 as defined in section 130.011, RSMo, from the candidate's personal
7 funds, it shall be sufficient identification to state the first and last
8 name by which the candidate is known.

9 (2) In regard to any political solicitation paid for by a committee,
10 it shall be sufficient identification to state the name of the committee
11 as required to be registered by subsection 5 of section 130.021, RSMo,
12 and the name and title of the committee treasurer serving at the time
13 the solicitation is made.

14 (3) In regard to any political solicitation paid for by a
15 corporation or other business entity, labor organization, or any other
16 organization not defined to be a committee by subdivision (7) of section
17 130.011, RSMo, and not organized especially for influencing one or more
18 elections, it shall be sufficient identification to state the name of the
19 entity.

20 (4) In regard to any solicitation paid for by an individual or
21 individuals, it shall be sufficient identification to state the name of the
22 individual or individuals.

23 2. Any residential subscriber who receives a political solicitation
24 in violation of this section may file a complaint with the Missouri ethics
25 commission under section 105.957, RSMo. The Missouri ethics
26 commission shall address any complaint filed under this section in the

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27 **same manner as it addresses violations of subsection 8 of section**
28 **130.031, RSMo.**

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